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OFFICE OF PETITIONS

In re Application of :
Hariguchi et al. :
Application No. 09/895,972 : DECISION DISMISSING
Filed: 29 June, 2001 : PETITION
Attorney's Docket No. 9869-0005-999 :

This is a decision on the petition filed on 11 October, 2001, to accord the above-identified application a filing date of 29 June, 2001, with Figure 27 described in the specification as a part of the original disclosure.

The instant application was filed on 29 June, 2001. On 22 August, 2001, Initial Patent Examination Division mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a filing date of 29 June, 2001, but that Figure 27 described in the specification appeared to have been omitted. The Notice set a two month period for reply from the 22 August, 2001, mailing date.

In response to the Notice, the present petition was filed on 11 October, 2001, accompanied by one (1) sheet of drawings containing Figure 27. Petitioners assert that the one (1) sheet of drawings containing Figure 27 is entitled to a filing date of 29 June, 2001, because it is identical to Figure 27 in provisional Application No. 60/215,653, to which the present application claims priority.

The evidence is not persuasive. The record does not show that the sheet of drawings was received at the USPTO on 29 June, 2001. It is noted that the USPTO has a long-established and well

publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of MPEP 503.¹ This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. However, due to the absence in the record of a postcard receipt itemized with respect to the drawings that bears a USPTO date stamp of 29 June, 2001, showing that a sheet of drawings containing Figure 27 was received in the USPTO on 29 June, 2001, the application cannot be accorded a filing date of 29 June, 2001, with Figure 27 as a part of the original disclosure.

Petitioners argue that Figure 27 submitted on 11 October, 2001, is substantially similar to Figures 27 of the drawings filed with prior provisional Application No. 60/215,653, filed on 30 June, 2000, the priority case for the instant application; however, the mere fact that the figures in the priority application may resemble the figures submitted on 11 October, 2001, is insufficient to accord a 29 June, 2001, filing date for the figures submitted 11 October, 2001. The mere reference to another application is not an incorporation of anything therein into the application containing such reference.²

In view of the above, the petition is **dismissed**.

This application has already been processed without the drawing filed on 22 August, 2001. The one (1) sheet of drawings containing Figure 27 filed on 11 October, 2001, will not be used for examination purposes, but will be retained in the application file.

Of course, petitioner may submit Figure 27 in the form of a preliminary amendment. If Figure 27 is submitted as a

¹ The public was afforded a "reminder" of the then extent post card receipt practice at 857 Off. Gaz. Pat. Off. 667 (O.G.) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the O.G. that contains important O.G. notices of continuing relevance.

² In re Seversky, 177 USPQ 144, 146 (C.C.P.A. 1973) and Dart Industries, Inc. v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980).

preliminary amendment, it will be reviewed by the examiner for new matter.

As the petition resulted from applicant's filing error and not as a result of an error on the part of the Office, a petition fee of \$130.00 is due and will be charged to counsel's deposit account, No. 16-1150.

Any request for reconsideration of this petition must be submitted within **two months** of the mailing date of this decision in order to be considered timely. See 37 CFR 1.181(f). Extensions of time under 37 CFR 1.136(a) are not permissible.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 29 June, 2001, using the application papers filed on that date. The copy of Figure 27 supplied with the present petition will not be processed or examined, but will be retained in the application file.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood, at (703)308-6918.



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